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CLEARINGHOUSE RULE 98-072

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In several SECTIONS of the rule, “PSC” and the rule section number need to be inserted at the beginning of the text. For example, in SECTION 2, “PSC 165.02” should be inserted before “(2).” In SECTION 3, “PSC 165.02” should be inserted before “(5).”

b. The terms defined in s. PSC 165.02 (25) and (26), should be reversed so that they are in alphabetical order.

c. The text on the outflow of information in s. PSC 165.02 (30) (a) is essentially a definition of “outflow of information about users of telecommunications services.” As such, this phrase should be defined in a separate subsection in s. PSC 165.02. Paragraph (b) could then be consolidated with sub. (30) (intro.).

d. Rules should avoid the use of vague words and phrases, such as “thereof” and “herein” or “such” in place of an article. [See s. 1.01 (9) (c), Manual.] This drafting style was not followed in ss. PSC 165.02 (2) and (33) (a) and 165.22 (1) (intro.).

e. The phrase “of this chapter” in s. PSC 165.20 is redundant and should be deleted from the text of the rule. In this section, “ss. PSC 165.20 to 165.30” should replace “ss. 165.20 through 165.30 of this chapter.”

f. The preferred drafting style is to precede a list with an introductory provision that ends with a colon. This style was not followed in the list in s. PSC 165.22 (1). To use the

preferred drafting style in this subsection, the first sentence in s. PSC 165.22 (1) (intro.) should end with a colon after “delivery,” and the second sentence in this introduction should be moved to a separate subsection.

g. A mandatory duty should be denoted in a rule through the use of “shall”; an optional provision or discretionary authority should be noted through the use of “may.” A prohibition should be stated as “no person may . . .” or “a person may not . . .” In addition, “should,” “will,” “must” or “it is the responsibility of” should not be used to express a mandatory or permissive action. [See s. 1.01 (2), Manual.] This drafting style was not followed in ss. PSC 165.22 (1) (intro.) and (4) and 165.27 (1) (intro.).

h. Once a term is defined in a rule, the term should be used consistently throughout the rule. Section PSC 165.22 (5) (a) uses the term “caller identification service” rather than the defined term “telephone caller identification service.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. The analysis accompanying the rule cites s. 196.209, Stats., as authorizing rule-making. The reference to s. 196.209, Stats., is unduly broad as that section contains other provisions in addition to the duty to adopt rules; sub. (1) in s. 196.209 should be cited.

b. The references to statutory definitions in s. PSC 165.02 (5), (6), (34) and (35) should be to a specific subsection in s. 196.01, Stats. For example, the definition of “basic local exchange service” in s. PSC 165.02 (5) should reference the statutory definition in s. 196.01 (1g), Stats.

c. In s. PSC 165.22 (2) (a) 2., “ss. 196.207 (2) (e) 2. and 3., Stats.” should replace “ss. 196.207 (2) (e) 2 and 196.207 (2) (e) 3.”

d. In s. PSC 165.22 (3) (b) and (c), should the reference to “sub. (1)” be changed to refer instead to “par. (a)”?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The article preceding “calling party’s billing number” in s. PSC 165.02 (2) should be “a” rather than “the.”

b. It is not clear whether the lists in the definitions of “customer proprietary network information” in s. PSC 165.02 (17) and in “subscriber list information” in s. PSC 165.02 (33) are meant to identify alternative definitions or components of a single definition of these terms. If, for example, the commission intends these to be alternative definitions, then the commission should insert “any of the following” after “means” in the introductory portions of these definitions to clarify the construction of these definitions. Throughout the rule, “any of the following” or “all of the following” needs to be inserted in introductory material. [See s. 1.03 (8), Manual.]

c. Since an area of the state may have more than one telephone directory, the commission should review the definitions of “non-published number” and “non-listed number”

in s. PSC 165.02 (25) and (26) to determine if the reference to “the telephone directory” should be qualified to remove any ambiguity over the meaning of these terms.

d. The definition of “privacy consideration” in s. PSC 165.02 (30) (intro.) is not clear. The commission should review this definition and redraft it as appropriate. For example, drafting the predicate clauses in parallel construction should improve the clarity of the definition.

e. If the commission intends the reference to “statute or the constitution” in s. PSC 165.02 (30) (b) to include federal and state statutes and the U.S. and Wisconsin Constitutions, then the commission should revise this paragraph to explicitly include these references. Similarly, the commission may wish to consider referencing in this paragraph the federal wiretap law after it cites the Wisconsin wiretap law in ss. 968.28 to 968.37, Stats.

f. To assist readers of the rule, the commission should consider identifying which telecommunications services are not subject to the requirements of s. 196.207, Stats., in a note following s. PSC 165.02 (38).

g. Section PSC 165.22 (1) (intro.) refers to “calling name delivery” and “calling number delivery” whereas s. PSC 165.22 (2) (a) (intro.) and (3) (a) use the more general term “telephone caller identification service.” The commission should review its use of “calling name delivery” and “calling number delivery” in s. PSC 165.22 (1) (intro.) to determine whether these more specific terms are appropriate in that provision.

h. The commission should review the following undefined terms and determine whether a definition is necessary to ensure a consistent application of the rule:

(1) “Competitive local exchange carrier” in s. PSC 165.22 (4).

(2) “Blocked call blocking functionality” in s. PSC 165.22 (5) (b) 5.

i. Section PSC 165.30 (2) specifies who the commission shall appoint as members of the telecommunications privacy council. This list of members includes the Attorney General or his or her designee, the Secretary of the Department of Administration or his or her designee and the Cochairpersons of the Joint Committee on Information Policy or their designees. While the commission may bind itself in this rule to request these individuals to serve as members of the telecommunications privacy council, the commission may not require these individuals to accept these appointments. Section 196.209 (5), Stats., does not obligate any of these persons to serve as members of the council. The commission should revise s. PSC 165.30 (2) to reflect its preferences for membership of the council, consistent with this constraint on its appointing powers.

j. If the commission intends for the telecommunications privacy council to advise the commission on the administration of s. 196.207, Stats., then the rule would be clearer if the duties of the council specified in s. PSC 165.30 (6) included a reference to this duty.

k. In s. PSC 165.27 (4) (j), should the two occurrences of “and” be replaced by “or”?

1. In s. PSC 165.29 (5), “the chairperson” should replace “these positions” since only one position is being discussed.